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VIA EMAIL AND U.S. MAIL

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Application of Carolina Water Service, Inc.;
Docket No. 2004-357-WS

Dear Mr. Terreni:

This letter is sent in reply to the response of the Office of Regulatory Staff ("ORS") to the comments of Carolina Water Service, Inc. ("CWS"), both of which were sent to you on June 2, 2005, regarding the May 31, 2005 Proposed Order of ORS in the above-referenced docket.

Although not desiring to further burden you or the Commission with respect to the matter raised in these documents, CWS is compelled to reply to the new matter raised by ORS. Specifically, ORS has propounded a view of the purpose of the proposed orders submitted to the Commission by parties. CWS takes issue with that view for several reasons.

CWS submits that the purpose of the proposed orders in this case is exactly the same as that of a post-hearing brief – as a matter of both law and fact. As the Commission is aware, its regulations contemplate that parties will submit briefs setting forth their positions in a case but make

(Continued . . .)

no provision for proposed orders. See 26 S.C. Code Ann. Regs. R. 103-875 (1976). However, at hearing, the Chairman and counsel for the parties engaged in a colloquy in which all recognized that post-hearing briefs or proposed orders would be submitted **in lieu of closing arguments**. [Tr. p. 516, l. 20 – p. 517, l. 22.] And, also in that colloquy, the Chairman expressed a preference that the parties submit proposed orders, as opposed to briefs, but stated no distinction between the purpose of the two. [Tr. p. 517, ll. 14-18.] CWS respectfully submits that the Chairman's intent was to permit the parties to make a written filing which would allow the parties to advocate an outcome.

Furthermore, ORS's assertions that "a proposed order is intended to be drafted from the Commission's point of view" and that "ORS seeks to set forth findings and conclusions based on **all** the evidence that is in the record of the case as evaluated by the Commission, and not ORS" is patently incorrect since **ORS cannot possibly know what the Commission's point of view in this case is since the Commission has not announced any ruling**. ORS has confused a proposed order giving effect to a ruling which has been announced by a tribunal and a proposed order submitted to advocate to the tribunal an outcome in the case. As to the former, a party must adhere strictly to the announced ruling of the tribunal in drafting the order and the tribunal may not depart from such announced ruling in issuing an order. See *McCranie v. Davis*, 278 S.C. 513, 299 S.E.2d 338 (1993); see also *Martin v. Ross*, 286 S.C. 43, 331 S.E.2d 785 (Ct. App. 1985). As to the latter, the parties can only advocate an outcome since the ruling of the tribunal has not been established. [Tr. p. 520, ll. 10-13.] Thus, the proposed orders in this case cannot possibly be "written from the perspective of the tribunal" as ORS contends.

Finally, and as the Commission is aware, parties of record must be provided an opportunity to comment upon proposed orders. See S.C. Code Ann. § 58-3-30(B) (Supp. 2004) and South Carolina Appellate Court Rule 501, Canon 3 (7)(e), Commentary. Counsel for the parties also have a duty with respect to proposed orders. See *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) (observing that counsel submitting proposed orders in post-conviction relief cases "should be meticulous in doing so [and] opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order").¹ CWS submits that the meticulousness contemplated in the cited case is required to insure that a proposed order reflects the tribunal's instructions with respect to a ruling. Because there is no ruling from the Commission at this stage of this proceeding, ORS's proposed order can only be read as advocating a particular ruling by the Commission and not as carrying out the instructions of the Commission.

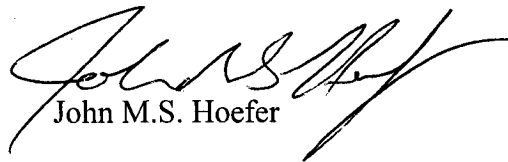
¹The undersigned in no way calls into question the meticulousness of counsel for ORS in preparing its proposed order as she is known to all to be a person of the highest integrity who zealously represents her client while scrupulously observing all rules, including those governing the Commission's procedures.

The Honorable Charles L.A. Terreni
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If you have any questions, or need additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M.S. Hoefer

JMSH/twb
cc: Counsel of Record